

## **REMARKS**

Applicant has fully considered the Office Action and cited references and submits this reply and amendments in response to the rejections along with a Request for Continued Examination filed herewith. Although Applicant respectfully disagrees with the Examiner's rejection of claims 10-13, Applicant herein cancels claims 10-13 without prejudice in the instant application. New claims 17-20 are added to the application. Applicant believes that the present application is now in condition for allowance for the reasons set forth below and therefore respectfully requests reconsideration and withdrawal of each and every rejection.

### **Response to the Arguments**

In the Office Action, the Examiner maintained his rejection of claims 10-13 under 35 U.S.C. § 103(a) as being unpatentable over Barker et al. (U.S. Pub. No. 2002/0143934). Applicant respectfully disagrees with the Examiner's comments and further herein incorporates by reference each argument previously set forth in regards to the Barker et al. reference. However, in order to further prosecution of the present application, Applicant herein cancels claims 10-13 of the present application.

In view of the above, Applicant respectfully submits that the Examiner's rejection of claims 10-13 is herein rendered moot.

### Claim Rejection – 35 U.S.C. § 103

In the Office Action, the Examiner rejected claims 1-3 under 35 U.S.C. § 103(a) as being unpatentable over Hunt et al. (U.S. Pat. No. 6,223,215). The Examiner also rejected dependent claims 4 and 7 under 35 U.S.C. § 103(a) as being unpatentable over Hunt et al. and in further view of McConnell et al. (U.S. Pat. No. 7,240,027). Applicant appreciates the Examiner's review of the instant application in view of the prior art. However, as set forth below, Applicant respectfully submits that the prior art references cited by the Examiner, alone or in combination, do not disclose or otherwise render obvious the subject matter disclosed in Applicant's claims, as amended. Therefore, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 1-4 and 7 over the prior art references.

In the Office Action, the Examiner states that it would have been obvious to modify the system taught by Hunt et al. to include the limitations disclosed in the instant application. In particular, the Examiner states that:

given 'the user interacting with the store site by adding or deleting items from a shopping cart,' it 'would have been obvious...to modify Hunt's selected items list to be indicative of 'expected revenue' with the motivation of providing the shop keeper with an indicator representative of the expected sales at a particular point in time.' See ¶ 8, page 3.

it would have been obvious...to modify Hunt's system for measuring the effectiveness of media placements to include a comparison of the actual revenue signal with the expected revenue signal with the motivation of determining factors (out-of-stock, replacement by a competitive product, etc) that caused the expected revenue signal to be different from the actual revenue signal. See ¶ 8, page 4.

Applicant appreciates the Examiner's remarks. Although Applicant respectfully disagrees with the Examiner's comments, Applicant herein amends independent claim 1, and thus each claim which depends therefrom, to more clearly define the subject matter of Applicant's invention. Applicant believes that independent claim 1, as amended, is not rendered obvious by the Hunt et al. reference.

The instant application is directed to “[a] store transaction system that can determine what a store should be making each day if all the customer transactions were entered into the stores point of sale computer.” See Abstract. In particular, the disclosure teaches “integration of a store point of sale computer system with a store transaction system...as a solution to the *employee* revenue theft. See ¶ [0009]. The application teaches:

an ‘Integrated Computer And Store Transaction System’ (ICASTS) that compares information accumulated in a store point of sale computer system *as input by the store employee* and corresponding information accumulated in a store transaction system and notes any differences automatically. See ¶ [0016]

The system compares “the expected revenue...with actual revenue so that an owner can determine if any *employee* theft, bad salesmanship or other problem is occurring.” See ¶ [0024].

Importantly, the system presently disclosed and claimed is utilized in a traditional brick-and-mortar, i.e., “physical” store having employees dealing directly with customers, rather than an online store where no such interaction occurs. Applicant's independent claim 1 is herein amended to more clearly define

that aspect of the present invention. Support for such amendments can be found, for example, in paragraph [0025].

In particular, amended claim 1 now requires the steps of:

providing at least one sensor associated with a physical store, the sensor receiving information indicative of customer activity and automatically outputting activity signals indicative of such customer activity sensed by the sensor;

receiving the customer activity signals automatically via a transaction computer and automatically generating an expected revenue signal indicative of expected revenue to be received by the physical store based upon the customer activity; and

generating an actual revenue signal indicative of actual revenue received by the physical store during the same time period encompassed by the customer activity resulting in the expected revenue signal, and comparing the actual revenue signal with the expected revenue signal.

Hunt et al. does not mention or even suggest a system that can be utilized by “a physical store.” Instead, Hunt et al. is directed solely to a system that tracks a user's purchases on the Internet by associating the user with an inbound source and a session identifier, i.e., an “interactive network session.” Hunt et al. states:

Accordingly, the present invention provides interactive *network* session tracking from inbound source to *net sale*...The user's actions, such as page views, product detail views, and additions and deletions of items in a *virtual* shopping cart, can also be stored

in the session database associated with the session ID. See col. 2, lines 17-20.

The Hunt et al. reference simply does not teach or even suggest a system that can be utilized in “a physical store.” Further, there is no suggestion to modify the system disclosed by the Hunt et al. reference to be applicable to “a physical store,” since to make such modifications would render the system disclosed by Hunt et al. unusable for its intended purpose. Thus, the Hunt et al. reference does not anticipate or render obvious the subject matter of Applicant’s amended claim1, and thus each claim which depends therefrom.

The Examiner also rejected dependent claims 4 and 7 over the Hunt et al. reference in view of McConnell et al. As the Examiner is aware, claims 4 and 7 depend from independent claim 1. Therefore, a prior art reference, or combinations thereof, must also teach each and every limitation found in independent claim 1 in order to render claims 4 and 7 unpatentable. For the reasons set forth above, Applicant believes that the Hunt et al. reference does not disclose or render obvious the subject matter recited in independent claim 1, and thus any claim which depends therefrom. A careful review of the McConnell et al. reference reveals that it fails to correct the deficiencies of Hunt. Also, there is nothing in the Hunt reference or the McConnell reference to suggest combining the teachings of each.

In the Office Action, the Examiner states:

McConnell in at least Column 4, lines 31-48 discloses a system and method for determining customer impact occasioned by an out-of-stock event by estimating for each customer, an expected purchase amount and comparing it with the actual purchase amount. See ¶ 9, page 6.

Applicant respectfully disagrees with the Examiner's interpretation of the McConnell et al. reference. Particularly, Applicant does not believe that McConnell teaches "generating an expected revenue signal indicative of expected revenue to be received by the physical store **based upon the customer activity**" and then "generating an actual revenue signal indicative of actual revenue received by the physical store **during the same time period encompassed by the customer activity** resulting in the expected revenue signal," as recited in claim 1. (emphasis added) Instead, the passage relied on by the Examiner states:

"The method comprises identifying each of a plurality of customers, correlating current out-of-stock events to each customer's purchasing event, analyzing historical purchasing data for each customer, estimating, for each customer, an expected purchase amount for at least one out-of-stock item **based on the historical purchasing data**, and comparing, for each customer, the actual purchases during the customer's purchasing event relative to the estimated expected purchase amount for the at least one out-of-stock item." (emphasis added)

The McConnell et al. reference appears to merely review previous purchases of a particular product made by a customer to determine if revenue may be lost in a current purchasing event due to that product now being out-of-stock. There is no mention of or suggestion to modify the McConnell et al. reference to include the steps recited in amended claim 1, as described above. Further, there is no motivation to combine the teachings of Hunt et al. with the teachings of McConnell et al. and to do so would not disclose each and every

limitation found in amended claim 1, and thus each claim which depends therefrom.

In the Office Action, the Examiner also rejected claims 10-13 under 35 U.S.C. § 103(a) as being unpatentable over Barker. As noted above, Applicant herein cancels claims 10-13 of the instant application without prejudice. Therefore, the Examiner's rejection of claims 10-13 is herein rendered moot.

For the reasons set forth above, it is Applicant's belief that, alone or in combination, Hunt et al. and/or McConnell et al. fail to teach the inventive aspects of Applicant's independent claim 1, as amended, and thus claims 2-4 and 7 which depend therefrom, and further submit that there is no motivation to combine the teachings of Hunt and McConnell. Therefore, Applicant respectfully requests reconsideration and withdrawal of the Examiner's rejection of claims 1-4 and 7 under 35 U.S.C. § 103(a).

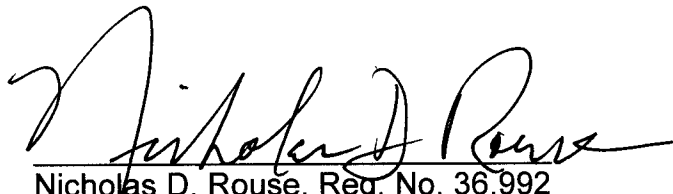
#### New Claims

Applicant herein submits new claims 17-20. Support for such claims can be found in at least paragraphs [0022]-[0026] of the disclosure. Further, Applicant submits that new claims 17-20 do not extend the scope of the pending application and therefore no new search should be required by the Examiner. Therefore, Applicant respectfully requests consideration and passage of the new claims to allowance.

### **CONCLUSION**

The foregoing is intended to be a complete response to the Office Action dated November 12, 2008. Reconsideration and withdrawal of the rejections is respectfully requested. Should the Examiner have any questions or comments regarding the foregoing, Applicant's attorney would welcome a telephonic interview with the Examiner.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nicholas D. Rouse", is written over a horizontal line.

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